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January 28, 2010

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: CC Docket No. 96-45 Federal-State Joint Board on Universal Service

47 C.F.R. § 1.41 Request for Commission Action
Objection to TracFone Wireless, Inc.'s Self-Certification in the State of Colorado

Dear Ms. Dortch:

The Adams County E-911 Emergency Telephone Service Authority, the Arapahoe County E-911 Emergency Communication Service Authority, and the Jefferson County Emergency Communications Authority (which includes Broomfield County) (collectively hereinafter the "911 Authorities") request Federal Communications Commission action pursuant to 47 C.F.R. § 1.41. Specifically, the 911 Authorities object to TracFone's self-certification that it is in compliance with basic 911 and E911 requirements in the state of Colorado. FCC Order 09-17 authorizes self-certification. The same Order states in paragraph 7 that "TracFone's designation as an ETC eligible for Lifeline support in each state is conditioned upon TracFone's certification that it is in full compliance with any applicable 911/E911 obligations, including obligations relating to the provision

and support of 911 and E911 service. Therefore, TracFone must comply with any state requirements that are applicable to carriers providing service on a purely-resale basis” (*footnote omitted*).

On January 13, 2010, José A. Fuentes, Director of Government Relations, TracFone Wireless, Inc., notified several of the PSAPs in the state of Colorado, including PSAPs in the jurisdiction of the 911 Authorities submitting this letter, that TracFone intended to self-certify. That correspondence, without attachments, is attached as “**Exhibit A.**” TracFone had previously received written notices of non-compliance from several Colorado PSAPs stating that TracFone was not collecting the emergency telephone charge (hereinafter the “911 fee”). TracFone’s refusal to collect the 911 fee is neither consistent with Colorado law nor is it in the public interest.

The 911 Authorities are responsible for collecting the emergency telephone charge and for providing funding to nineteen public safety answering points (“PSAPs”) within their jurisdiction. 1.6 million citizens live within the 911 Authorities’ jurisdiction. When TracFone applied for ETC status in Colorado, the 911 Authorities intervened in TracFone’s ETC proceeding that was pending before the Colorado Public Utilities Commission (“Colorado PUC”) in Docket No. 09A-393T. The 911 Authorities alleged in their Motion to Intervene that “TracFone’s refusal to pay the emergency telephone charge is contrary to the Colorado Revised Statutes.” TracFone admitted that no court had ever determined that the Colorado 911 fee statutes do not apply to TracFone, and no court has ever excused TracFone from collecting and remitting the 911 fee.

The issue of TracFone’s compliance with Colorado 911 funding requirements was presented to the Colorado PUC pursuant to FCC Order 08-100, paragraph 16, where the FCC “conditioned TracFone’s designation as an ETC eligible for Lifeline support in each state on TracFone’s certification that it is in full compliance with any applicable 911/E911 obligations, including

obligations relating to the provision, and support, of 911 and E911 service.” This condition was reiterated by the FCC in Order 09-17, as is noted above.

TracFone’s non-compliance with Colorado 911 funding requirements was raised during the intervention of the 911 Authorities and was directly before the Colorado PUC on TracFone’s Application for ETC Status in Colorado. TracFone withdrew its Colorado application expressly stating that the reason for the withdrawal was the intervention by the 911 Authorities. TracFone stated in its Notice of Withdrawal that it would seek legislative changes in collecting the 911 fee, thereby avoiding a determination that TracFone is in violation of existing 911 funding laws.

The 911 Authorities respectfully request that the FCC take action to compel TracFone Wireless, Inc., to comply with Colorado law relating to 911 funding and to deny or invalidate TracFone’s self-certification in Colorado until TracFone is in compliance with Colorado law. Paragraph 7 of FCC Order 09-17 states that “[t]o the extent an entity disagrees with TracFone’s self-certification, it may file a request asking the Commission to examine the issue pursuant to § 1.41 of the Commission’s Rules (47 C.F.R. § 1.41).”

47 C.F.R. § 1.41 REQUEST

Facts Relied Upon:

TracFone Wireless, Inc. has advised many Colorado PSAPs that it intends to self-certify. The issue of TracFone’s compliance with Colorado 911 funding laws was directly before the Colorado PUC. TracFone withdrew its application prior to permitting a final hearing on its noncompliance with Colorado 911 funding laws. Compliance with the Colorado 911 funding laws is a condition precedent to TracFone’s self-certification.

Relief Sought:

TracFone should be compelled to comply with Colorado 911 funding laws and TracFone's self-certification should be denied until TracFone is in compliance with Colorado 911 funding laws.

The Statutory and/or Regulatory Provisions Pursuant to which the Request is Filed and Under which Relief is Sought:

The Colorado Revised Statutes ("C.R.S.") § 29-11-100.5, *et seq.*, identifies the requirement for TracFone to collect and remit the 911 fee. TracFone is a service supplier that provides telecommunications service via wireless carrier by resale. C.R.S. § 29-11-101(7). TracFone customers are service users as they are provided telecommunications service via wireless carrier. C.R.S. § 29-11-101(8). Each governing body can set the 911 fee "not to exceed seventy cents per month per exchange access facility, per wireless communications access, and per interconnected voice-over-internet-protocol service in those portions of the governing body's jurisdiction for which emergency telephone service will be provided." C.R.S. § 29-11-102(2)(a). Colorado PUC approval is needed to charge in excess of seventy cents per month. C.R.S. § 29-11-102(2)(b). "Regardless of the level at which the charge is set, the amount of the charge imposed per exchange access facility, per wireless communications access, and per interconnected voice-over-internet-protocol service shall be equal." C.R.S. § 29-11-102(2)(c). The duty to collect the 911 charge "shall commence at such time as may be specified by the governing body." C.R.S. § 29-11-102(5). C.R.S. § 29-11-102(5) recognizes that billing statements may not be submitted to a service user: "[c]harges imposed under the authority of this article and required to be collected by the service supplier [e.g., TracFone] shall be added to and may be stated separately in the billings, *if any*, to the service user" (*emphasis added*). Even if no billings are sent to customers, TracFone is still required to collect the 911 fee in the state of Colorado.

A service user is billed for the 911 fee in Colorado when the governing body imposes the 911 fee after requesting wireless ANI or ALI from the wireless carrier. C.R.S. § 29-11-102(2)(b). Once billed, the service user remains liable for the 911 fee until paid to the service supplier. C.R.S. § 29-11-102(4). TracFone speciously argues that because it does not send billing statements to its service users, it is exempt from collecting and remitting the 911 fee. TracFone's argument is extremely narrow and shallow and renders other parts of Colorado law ineffective. It also directly contradicts C.R.S. § 29-11-102(2)(c), which requires that the 911 fee be imposed equally within a jurisdiction for all landlines, wireless lines, and VOIP service. Being exempt from the 911 fee is not equal to paying the 911 fee. TracFone's argument would also exempt from the 911 fee those service users who pay their landline, wireless, or VOIP monthly bill by automatic bank debit or credit card charge as no bill is sent to those customers.

Interest of the Person Submitting the Request:

The ability of the 911 Authorities to provide a well-funded public safety communications system is diminished by TracFone's refusal to collect and remit the 911 fee. The 1.6 million people who reside in the 911 Authorities' jurisdiction travel throughout the state of Colorado and desire quality 911 services throughout the state. TracFone's failure to collect and remit the 911 fee affects all PSAPs in the state as each PSAP has diminished revenue to support 911 services. All of the PSAP's in the state of Colorado are worse off because of TracFone's refusal to collect and remit the 911 fee. Service users with wireless phones pay over 50 percent of the 911 fees collected in Colorado. Industry analysts believe prepaid wireless comprises approximately 19.1 percent of the wireless market. TracFone represents itself as the largest prepaid wireless carrier in the U.S. and prepaid wireless is the fastest growing segment of the wireless industry. The 911 Authorities are directly affected by TracFone's refusal to comply with Colorado law.

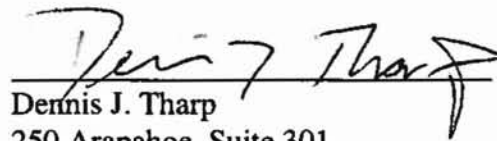
CONCLUSION

The Adams County, Arapahoe County and Jefferson/Broomfield County 911 Authorities respectfully request the FCC compel TracFone to comply with Colorado law and to revoke or invalidate TracFone Wireless, Inc.'s self-certification on the grounds that TracFone is not in compliance with Colorado 911 funding requirements imposed under C.R.S. § 29-11-100.5, *et seq.*

Should you have any question about this letter, or should additional information be needed, please contact the undersigned.

Respectfully submitted,

STEVENS, LITTMAN, BIDDISON, THARP
& WEINBERG, L.L.C.

A handwritten signature in dark ink, appearing to read "Dennis J. Tharp", written over a horizontal line.

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January 13, 2010

Mr. Dennis Tharp
9-1-1 Coordinator
Adams County E911 Authority Board
250 Arapahoe, Ste 301
Boulder, CO 80302

Re: TracFone Wireless, Inc. – Notification of Intent to Self-Certify
Compliance with 911 and E911 Availability Condition

As you are aware, by order issued March 5, 2009, the Federal Communications Commission ("FCC") modified the Public Safety Answering Point ("PSAP") certification condition previously imposed on TracFone (In the Matter of Federal-State Joint Board on Universal Service and TracFone Wireless, Inc., et al, FCC 09-17). For your convenience, a copy of the FCC's March 5, 2009 order is enclosed with this letter. Your attention is directed to paragraph 6 of the FCC order which allows TracFone to self-certify in situations where the PSAP has not provided the requested certification within 90 days of the request and the PSAP has not made an affirmative finding that TracFone does not provide its customers with access to 911 and E911 service.

By letter dated September 25, 2009 you were requested to certify by December 23, 2009 that TracFone customers have access to 911 and E911 service. Although the ninety day period contemplated by the FCC's order has expired, as of the date of this letter, TracFone has not received the requested certification from your office. By this letter TracFone Wireless, Inc. ("TracFone") certifies that TracFone Lifeline customers in the area covered by your 911 call center will be able to access 911 and E911 without regard to activation status or availability of prepaid minutes. Enclosed with this document are letters from AT&T, T-Mobile and Verizon Wireless, the three underlying network operators whose networks TracFone uses to provide service to its customers in your area, confirming that each of those underlying carriers routes 911 calls from TracFone customers in the same manner as it routes 911 calls from its own retail customers.

If you have any questions regarding this notification to self-certify please do not hesitate to contact me.

Sincerely,

José A. Fuentes
Director of Government Relations
TracFone Wireless, Inc.

